

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NOEL MARTINEZ, :  
: Movant, : 21-CV-10445 (LTS)  
: :  
-v- :  
: UNITED STATES OF AMERICA, :  
: Respondent. :  
: :  
-----X  
: :  
UNITED STATES OF AMERICA, : 18-CR-319-8 (LTS)  
: :  
-v- :  
: NOEL MARTINEZ, : AMENDED  
: : ORDER  
: :  
Defendant. :  
: :  
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Now before the Court is movant-defendant Noel Martinez's motion pursuant to 28 U.S.C. section 2255 to vacate his sentence of 180 months of imprisonment and five years of supervised release, imposed by the Court on May 20, 2021, in connection with Mr. Martinez's guilty plea and conviction of having possessed and used firearms in furtherance of a crime of violence in violation of 18 U.S.C. section 924(c)(1)(A)(ii) and 2. (See docket entry nos. 389, 394.) Mr. Martinez claims that a factual error underlying the calculation of his applicable sentencing guidelines range (in the parties' plea agreement and the presentence investigation report as adopted by the Court at sentencing) resulted in a Career Offender guidelines range of 262 to 327 months imprisonment, which was well above the guidelines range that he claims

would have been applicable absent that error. Mr. Martinez claims that his prior counsel's failure to object to that factual error and resulting Career Offender guidelines range constituted ineffective assistance of counsel, warranting relief under section 2255.

On December 8, 2021, the Court appointed counsel to represent Mr. Martinez in connection with his section 2255 motion. Appointed counsel now writes to the Court (at docket entry no. 487) reporting that, “[i]n the unique circumstances of this case, the Government consents to the granting of the Petition on the basis of ineffective assistance of counsel in connection with [Mr. Martinez’s] sentencing,” and requesting, on consent, that the motion be granted for the reasons stated therein, that Mr. Martinez’s sentence be vacated, and that this case be scheduled for resentencing.

In light of Defendant’s proffers as to the error in the calculated guidelines range applicable to Mr. Martinez and the ineffectiveness of his prior counsel, and the parties’ consent, the Court vacates the judgment of conviction at docket entry no. 389. The Probation Office will be directed to prepare an updated presentence investigation report including revised sentencing guideline calculations and sentencing recommendations as to Mr. Martinez.

The parties are directed to appear for a resentencing hearing on **June 7, 2022, at 10:00 a.m.** The Government is directed to have Mr. Martinez produced for the sentencing, unless Mr. Martinez, after consultation with his counsel, agrees to proceed remotely or waives altogether his right to be present for the resentencing. Defense counsel must file a written statement concerning Mr. Martinez’s decision in this regard no later than 21 days before the sentencing date. Mr. Martinez’s sentencing submission must be filed no later than 14 days before the sentencing date, and the Government’s sentencing submission must be filed no later than 7 days before the sentencing date.

The motion is granted. The sentence imposed on May 20, 2021, is vacated (see docket entry no. 389) and Mr. Martinez will be resentenced as set forth above. This Memorandum Order resolves docket entry no. 440 in case no. 18-CR-319. The Clerk of Court is directed to enter judgment in accordance with this decision and to close case no. 21-CV-10445.

Defense counsel is directed to mail a copy of this Order to Mr. Martinez.

SO ORDERED.

Dated: New York, New York  
March 11, 2022

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge